

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

CHRISTOPHER J. EVANS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent..

1:02-CR-38(WLS)

1:04-CV-119 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Judge G. Mallon Faircloth (Doc. No. 70), filed January 11, 2006. It is recommended that Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 be denied. Petitioner has filed a timely objection. (Doc. No. 71). The Government has also filed a response. (Doc. No. 72).

Petitioner seeks an out-of-time appeal. Petitioner maintains that trial counsel was ineffective in failing to properly and timely file a notice of appeal. The Magistrate Judge conducted an evidentiary hearing on the matter. The Magistrate Judge heard testimony from both the Petitioner and his trial counsel. The Magistrate Judge determined that based on the weight of the evidence, Petitioner did not request his attorney file an appeal. Petitioner objects to this conclusion and argues that the Magistrate Judge's findings of fact are erroneous.

The Magistrate Judge, as the finder of fact, heard the evidence and the conflicts within the evidence. As such, the Magistrate Judge was in the best position to make credibility determinations. Upon review, this Court cannot say that the Magistrate Judge erred in that

there is ample evidence in the record to support his findings and conclusions. Accordingly, Petitioner's objection is **OVERRULED**.

Upon full consideration of the record, the Court finds that said Recommendation (Doc. No. 70) should be, and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and the reasons set out therein, and together with the reasons, findings and conclusion reached and set out herein. Therefore, Petitioner's petition for relief is **DENIED**.

SO ORDERED, this 11th day of October, 2007.

/s/W. Louis Sands
W. Louis Sands, Judge
United States District Court